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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 20th December 1952

S.R.O. 2080.—WHEREAS the election of Shri Hukam Singh as a member of the Legislative Assembly of the State of Uttar Pradesh from the Kaisarganj (South) Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Braj Naresh Singh of Bahraich City;

AND WHEREAS, the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT LUCKNOW

ELECTION PETITION No. 208 OF 1952

Shri N. S. Lokur—*Chairman.*

Shri S. N. Mitra—*Member.*

Shri Azizul Haque Fakhruddin—*Member.*

Braj Naresh Singh—*Petitioner.*

Versus

1. Hon'ble Shri Thakur Hukum Singh
2. Sri Gopi Nath.
3. Sri Athar Mehdi.
4. Sri Sachchidanand.
5. Sri Ram Sarup.
6. Sri Basant Rai Bhandari.
7. Sri Mahabir Prasad.
8. Sri Syam Lal.

} *Respondents.*

Shri Shiva Prasad Sinha, Advocate, assisted by Shri Bishun Singh and others appeared for the petitioner.

Shri Iqbal Ahmad, Advocate, assisted by Shri B. K. Dhaon, Shri M. P. Srivastava and others appeared for the respondent No. 1.

JUDGMENT

This is a petition filed under Section 81 of the Representation of the People Act, 1951, to have the election to the Uttar Pradesh Legislative Assembly held on 22nd

January, 1952, in the Kaisarganj (South) constituency declared wholly void on the ground that the result of the election has been materially affected by the improper rejection of the petitioner's nomination The petitioner alleges that his nomination was rejected by the Returning Officer on the ground that there was failure to comply with the provisions of Section 33(6) of the Act inasmuch as the certified copy about the entry in the electoral roll filed by the petitioner was held not to have been issued and certified by the proper authority The petitioner contends that the rejection was improper on the ground that on the day of the filing of the nomination paper, the Returning Officer had satisfied himself as required by law that the petitioner's name appeared in the Electoral roll that the copy of the entry in the roll produced by him was certified by the head copyist as a true copy on the authority and under the instructions of the Election Officer, that the Returning Officer contravened the provisions of Proviso 5 of the Act in not adjourning the proceeding to the next day but one to enable the petitioner to refute the objection that the Returning Officer acted beyond his power and in contravention of S 36(4) of the Act and that the Returning Officer should have satisfied himself about the petitioner's name having been entered in the electoral roll by referring to the roll already produced by respondent No 4

Respondent No 1 who succeeded in the election, is the only contesting respondent He contends *inter alia*, that the copy produced by the petitioner before the Returning Officer is not a certified copy, that none of the candidates had produced a copy of the electoral roll till he and his advocate left the office after the Returning Officer had concluded the scrutiny and that even if the nomination of the petitioner be proved to have been improperly rejected, it has not materially affected the result of the election Respondents Nos 2, 3 and 6 support the petitioners claim, while the other respondents have not appeared

On these pleadings the following issues were framed, namely—

1 Was the petitioner's nomination paper improperly rejected by the Returning Officer?

2 If so, has not the result of the election been materially affected thereby?

3 What orders?

The petitioner presented his nomination paper for election to the Uttar Pradesh Legislative Assembly in the Kaisarganj (South) Constituency, District Bahraich His name did not appear as an elector in the electoral roll of that constituency, but it did appear in the electoral roll of Patwari Circle Bahraich City Ward No 6 Mohalla Akbarpura in Bahraich West Constituency Section 33 sub section (6) of the Representation of the People Act, 1951 (hereinafter to be called the Act), provides that if at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer he shall for the purposes of sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of relevant entries in such roll The purpose mentioned in sub-section (5) is the satisfaction of the Returning Officer that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls In order to satisfy the Returning Officer on this point the petitioner applied for and obtained a copy of the entry of his name in the electoral roll for his constituency and produced it before the Returning Officer along with his nomination paper Sub-section (5) requires that on the presentation of a nomination paper, the Returning Officer should satisfy himself on the said point and apparently he was satisfied with the copy produced by the petitioner Otherwise it was incumbent on him under sub-section (6) to require the petitioner to produce a duly certified copy As he did not do so, the petitioner was not bound to produce any other certified copy The sub-section throws the burden on the Returning Officer, and not on the candidate, unless the latter is required to produce a certified copy The Returning Officer need not always require a certified copy for being satisfied Even if he is satisfied with any other evidence he need not call upon the candidate to produce a certified copy In this view, whether the copy produced by the petitioner is a properly certified copy or not, there was no failure on his part to comply with the provisions of S 33, and the Returning Officer should not have refused his nomination under S 36 sub-section (2) (d) of the Act, as he purports to have done Even in his order of refusal (Ex 42) the Returning Officer does not say that when the nomination paper was presented to him by the petitioner, he required him to produce a certified copy of the entry of his name in the electoral roll in order to satisfy him that he was an elector

It was only when respondent No. 1 raised an objection at the time of the scrutiny, that he held that the copy produced by the petitioner was not a certified copy. The reason given by him may be quoted in his own words:—

> "It has been argued that Rule 24 framed under the Representation of People Act, 1950, shows that the Electoral Registration Officer is the custodian of such papers and copies will be obtained from his office. In the present case the copy has been obtained from the copying department of the Deputy Commissioner's Office. It has been certified by the Head Copyist. It has not been shown to me that the Deputy Commissioner has been put in charge of such electoral roll under any order of the Government. Under these circumstances, any issue of copy by the Head Copyist is against law and the copy filed cannot be said to be valid and to be a certified copy. Rule 24 quoted above read with S. 76 of the Indian Evidence Act have not been followed."

Sub-rule (3) of Rule 24 which has been relied upon says:—

> "Such number of copies of the final electoral roll for each constituency as may be specified by the State Government shall be kept in the Office of the Electoral Registration Officer of the constituency to which such roll relates or at such other place as the said Government may by order specify until the publication of the next electoral roll for such constituency."

There is nothing on record to show what are the places specified by the State Government for the deposit of the copies of the final electoral roll. Sub-Rule (7) merely authorises every person to obtain "attested" copies thereof on payment of the prescribed fee. This does not mean that a copy, to be a "certified" copy, must be attested by the Electoral Registration Officer only. While Rule 24 sub-rule (7) speaks of an "attested" copy, Section 33 sub-section (6), requires the production of a "certified copy". Certified copy is not defined either in the Act or the Rules. For the meaning of that expression we have to turn to S. 76 of the Indian Evidence Act. It says:—

> "Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificates shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies."

It is true that under Rule 24 sub-rule (3) a certain number of copies of the final electoral roll is kept in the office of the Electoral Registration Officer and Ex. A. 7 shows that for Bahraich and Kaisarganj constituencies, the Tahsildars there were the Electoral Registration Officers. But the petitioner made his application for a certified copy to the Deputy Commissioner who happened to be also the District Election Officer. Ex. 6 shows that he was taking care to see that certified copies of entries in the electoral roll were promptly delivered to the applicants, and that he had charged the head copyist to do that job. We sent for the original of the copy produced by the petitioner before the Returning Officer and it is now before us. It is prepared on a cyclostyled form, bears a stamped endorsement that it is a true copy and is signed by the Head Copyist with the following designation stamped below it:—

> "Head Copyist, Deputy Commissioner's Office, Bahraich."

It also bears the seal of the Bahraich Collectorate (See Ex. P.W. 1/11). There is nothing suspicious about it, and the order of the Deputy Commissioner shows that he must have been in custody of the electoral roll and must have authorised his Head Copyist to attest certified copies of it. The explanation to S. 76 of the Indian Evidence Act says that—

> "Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section."

Hence the Head Copyist must be deemed to have had the custody of the electoral roll and as such he could issue copies of the entries therein certified by himself as true copies. The Returning Officer seems to have lost sight of the presumption

arising under S. 114 of the Indian Evidence Act. Illustration (e) to that section says that judicial and official acts are to be presumed to have been "regularly performed". He should have presumed that the official act of the Head Copyist in supplying the certified copy to the petitioner was regularly performed, and should not have thrown on the petitioner the burden of proving that the Deputy Commissioner, who was also the District Electoral Officer, had custody of the electoral roll and had duly authorised his Head Copyist to issue certified copies. In this connection the remarks of Mathur, J., in Suraj Narain v. Jhabbu Lal (I.L.R. 1944 ALL. 221) are very pertinent. Referring to certain copies of income-tax assessment orders produced in the case, he observed:—

> "It seems to me that these copies can be called certified copies, because they bear the seal of the income-tax department and bear an endorsement that they were duly copied and compared. It is not known as to who actually signed this endorsement, but I think it may fairly be presumed that the endorsement was signed by the persons who were authorised."

Similarly in the present case also it may fairly be presumed that the office of the District Electoral Officer, who was the Deputy Commissioner, had custody of the final electoral roll, and his Head Copyist was duly authorised to attest and issue certified copies. If any evidence is wanted to prove this presumption to be a fact, it is to be found in the letter written by the Chief Electoral Officer to Government, Uttar Pradesh, to the Secretary to the Election Commission, on 14th August, 1951, a certified copy of which is produced by respondent No. 1 himself at Ex. A4. In paragraph (1)(iv) of that letter he says:—

> "Sub-Rule (4) of Rule 24:—One copy of the Electoral Rolls in respect of each State Legislative Assembly Constituency and the House of the People Constituency shall be kept for permanent record at the District Election Office."

It is common knowledge that when public documents are kept in an office, it is not the head of the office who certifies copies thereof as true copies, but he authorises one of his subordinates to remain in custody of them and issue certified copies. We have no hesitation in holding that the head copyist of the Deputy Commissioner, who was also the District Election Officer, was the subordinate so authorised and the certified copy issued by him and produced by the petitioner before the Returning Officer is a properly certified copy as contemplated by S. 33 sub-section 6 of the Act.

The Returning Officer was, therefore, wrong in rejecting the petitioner's nomination on the ground that he had not complied with S. 33 sub-section (6) of the Act. Our finding on the first issue is in the affirmative.

As regards the second issue, it has been well-settled by a series of decisions given by various Election Tribunals during the last thirty years that as soon as a nomination is found to have been improperly rejected, the result of the election is to be presumed to have been materially affected and the election must be declared wholly void. It is impossible to lead such convincing evidence as can rebut that presumption. No case is cited where a contrary view taken. This interpretation which has been uniformly accepted in about forty cases ever since the decision of the Rohtak case in 1921 (reported in Hammond's Reports of Indian Election Petitions, Volume I, p. 183) has to be accepted on the ground of stare decisis, the wording of the cause in the present Act being the same as the one which had to be interpreted in those cases.

On behalf of respondent No. 1, reliance is placed on the wording of S. 100 (1)(c), which says that the Tribunal shall declare an election to be wholly void if it is of opinion—

> "that the result of the election has been materially affected by the improper acceptance or rejection of any nomination."

The plain meaning of this clause is that before an improper acceptance or rejection of any nomination can be a ground for setting aside an election, the Tribunal must form an opinion that in fact the result of the election has thereby been materially affected and not merely that it is likely to have been materially affected. We see the force of this argument and the loose wording of the clause, which is capable of interpretation that it must be proved that if the nomination had not been improperly accepted or improperly rejected, the candidate who was declared successful would not have been elected. It is possible to prove in certain cases of improper acceptance of a nomination that the result of election has not been materially affected.

Thus suppose, there were three candidates A, B and C at an election and A secured 12,000 votes, B 11,000 and C only 1,200. A having been elected, B may challenge the election on the ground that C's nomination was wrongly accepted. If that contention be upheld, it is possible that all the 1,200 votes secured by C might have gone to B and he might have won the election. But even then the Tribunal could not form an opinion that the result was materially affected in fact, because out of the 1,200 votes of C 200 might have gone to A and he would have still won the election. On the other hand, if C had secured only 800 votes, then it could be definitely asserted that the improper acceptance of C's nomination had not affected the result of the election. But in the case of an improper rejection of a nomination, it cannot be predicted what the result of the election would have been if that nomination had been accepted. We cannot conceive of any legal evidence which can assist the Tribunal in forming an opinion about it, one way or the other. The learned advocate for respondent No. 1 wanted to lead evidence to prove that in previous elections the petitioner had failed, that respondent No. 1 is so popular that he would have been elected in any event and that the candidates set up by the Congress had succeeded everywhere. But all this kind of evidence would not help in the determination of the result of the present election if the petitioner's nomination had been accepted and the electors had been given an opportunity to vote for him. Any number of witnesses called to speak to the number of votes that might or might not have gone to any particular candidate would be giving only speculative evidence which would have no value. It is impossible for any one to say how a particular elector might vote at the poll, and the secrecy of voting cannot be allowed to be violated. Even the fact that the candidate was defeated in previous elections does not help us, since it cannot be said that since then he has not gained a greater popularity among the electors. We cannot form any opinion on mere conjectures as to what the verdict of the electorate might have been if the petitioner's nomination was not rejected and the electorate had not been deprived of the right to vote for him.

It is rightly pointed out that if on the finding that a nomination is improperly rejected, it is to follow invariably that the result of the election has been materially affected, then it was not necessary for the Legislature to add that as a condition for the declaration of the election as wholly void. We agree that this condition is not only superfluous, but is incapable of fulfilment. It is a general principle of interpretation that a condition which is incapable of fulfilment should be ignored. Otherwise the condition would render the clause itself nugatory. "Lex non cogit ad impossibilia". The law does not compel a man to do that which he cannot possibly perform (*vide* Broom's Legal Maxims, ninth edition, p. 171).

In England under the common law rule applicable to Parliamentary elections, it was held in Davies v Kensington (1874, L.R. IX, C.P. 720) and the Mayo Case (1874, 2 O M. & H. 77) that when a nomination was improperly rejected, the election was wholly void. We do not think that the Indian Legislature wanted to lay down a different rule for the elections in India.

In some of the cases decided by the Election Tribunals in India it has been held, following the Rohtak case cited above, that by the improper refusal of a nomination paper by the Returning Officer, a presumption arises that the result of the election has been materially affected, and that the improper refusal was so grave an irregularity that this presumption would require the strongest and most conclusive proof for its rebuttal and that it lies heavily on the respondent to rebut the presumption so raised. We go further and say that the presumption is incabable of rebuttal, and any attempt to rebut it would only lead to nothing but speculation.

Hence both on the ground of stare decisis and on the ground that in the case of improper rejection of a nomination, it is impossible to prove that the result of the election has or has not been materially affected, we hold that an improper rejection of a nomination wholly avoids the election.

In this connection, we would suggest that the Legislature should take an early opportunity to remove all doubts by amending Section 100 sub-section (1) clause (c) of the Act by splitting it into two clauses as follows:—

(c) that any nomination has been improperly rejected or

(d) that the result of the election is likely to have been materially affected by an improper acceptance of any nomination.

Some such wording will leave no ambiguity and will clearly express what is really intended.

Before concluding, we would like to make another recommendation on the same lines as the one made as far back as in 1938 in the case of Pir Zain-ul-Abdin Shah v. Khan Sahib Sheikh Muhammad Amin (*vide* p. 597 of Indian Election Cases by Sen and Poddar at p. 606). Since in the case of an improper rejection of a nomination the whole election is bound to be set aside, and in the case of an improper acceptance of a nomination, the election is likely to be set aside, involving the enormous trouble and expense of a fresh election, there should be a provision for the final decision of questions pertaining to the acceptance or rejection of nomination papers before the commencement of the polling. Otherwise the successful candidate may be deprived of the fruits of his success without any fault, in spite of all the expense and worry undergone, merely because the Returning Officer takes an erroneous view and improperly accepts or rejects a nomination. If such provision is made, then S. 100(1) (c) of the Act should be deleted altogether.

As a result of our findings, the petition has to be allowed and the election declared wholly void. The costs must follow the event, and we allow a lump sum of Rs. 200/- as the costs payable to the petitioner.

We declare that the election held on 22nd January, 1952, to the Uttar Pradesh Legislative Assembly in the Kaisarganj (South) Constituency, District Bahraich, Uttar Pradesh, be wholly void. We order respondent No. 1 to pay to the petitioner a lump sum of Rs. 200 as his costs. The respondents shall bear their own costs.

(Sd.) N. S. LOKUR, *Chairman.*

(Sd.) S. N. MITRA, *Member.*

(Sd.) AZIZUL HAQUE FAKHRUDDIN, *Member.*

LUCKNOW,

18th December, 1952

[No. 19/208/52-Elec.III.]

S.R.O. 2081.—WHEREAS the election of Shri Charan Singh as a member of the Legislative Assembly of the State of Uttar Pradesh from the Baghpat (West) Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Pritam Singh of Village Kirthal, Police Station Chhaprauli, District Meerut;

AND WHEREAS the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT LUCKNOW

ELECTION PETITION NO. 287 OF 1952.

Sri N. S. Lokur—*Chairman.*
Sri S. N. Mitra,
Sri Azizul Haque Fakhruddin, } *Members.*

Pritam Singh—*Petitioner.*

Versus

1. Hon'ble Sri Charan Singh,
2. Sri Raghubir Singh,
3. Sri Onkar Dutt. } *Respondents.*

Shri Shiva Prasad Sinha, Advocate, assisted by Shri Bishun Singh and others appeared for the petitioner.

Shri Nanak Chandra, Advocate, assisted by Shri M P. Srivastava and others appeared for respondent No. 1.

Judgment

This is a petition under Section 81 of the Representation of the People Act, 1951 (hereinafter to be called the Act) to have the election of respondent No. 1 set aside

on various grounds stated therein by the petitioner. A preliminary objection has been raised by respondent No. 1 that the omission to join Chaudhari Mukhtar Singh and Chaudhari Sheo Kumar as respondents is fatal to the petition. The petitioner has now made an application that both of them should be added as respondents. This request being opposed by respondent No. 1, three questions arise for decision, namely:—

(1) whether Chaudhari Mukhtar Singh and Chaudhari Sheo Kumar are necessary parties to this petition;

(2) if so, whether they can now be joined as respondents; and

(3) if not, whether the petition is maintainable.

It is not disputed that Mukhtar Singh and Sheo Kumar were duly nominated and their nomination was accepted by the Returning Officer, but both of them withdrew their candidature within the time allowed under S. 37 of the Act. Section 82 requires that a petitioner in an election petition—

"shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated."

There is no doubt Mukhtar Singh and Sheo Kumar were candidates as defined in Section 79 and were duly nominated, but as they withdrew their candidature within the time allowed, their names did not appear in the list of valid nominations published under S. 38. The expression "duly nominated", though not defined in the Act, is to be distinguished from "validly nominated". "Validly nominated" is defined in Rule 2(1)(f) in the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, as meaning—

"a candidate who has been duly nominated and has not withdrawn his candidature in the manner and within the time specified."

This clearly brings out the distinction between the two expressions. A candidate "duly nominated" is one whose nomination has been accepted by the Returning Officer, though he may have withdrawn his candidature within the time allowed. Such candidates, though they may have withdrawn, are yet "duly nominated" candidates, but not "validly nominated".

Section 82 of the Act has deliberately used the expression "duly nominated", in preference to "validly nominated". It is quite conceivable that a duly nominated candidate may have withdrawn his candidature after seeing whether a particular candidate's nomination is accepted or rejected. If that acceptance or rejection is challenged by an election petition, then the candidate who has withdrawn his candidature may be interested in seeing that the acceptance or rejection is not set aside. He is, therefore, a party interested in that petition. It is for this reason that S. 82 rightly requires every duly nominated candidate to be joined, though he may have withdrawn his candidature and, therefore, not been included in the list of valid nominations. The petitioner has clearly accepted this view by applying to have Mukhtar Singh and Sheo Kumar added as respondents.

The application is, however, made too late An election petition against a returned candidate under S. 81 must be presented to the Election Commission within the time prescribed in Rule 119, that is to say, "not later than fourteen days from the date of publication of the notice in the official gazette under Rule 113 that the return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer". That time expired long ago and Mukhtar Singh and Sheo Kumar, who withdrew their candidature after knowing whose nominations were accepted or rejected, cannot now be called upon to answer the petition as they were not made parties to it in time. We must, therefore, reject the petitioner's application to implead them as respondents.

It is urged that the non-joinder of these two candidates cannot be fatal to the petition as no relief is claimed against them. The non-joinder of a proper party to a proceeding is not fatal to it, but not so in the case of the non-joinder of a necessary party. It is true that O.I.R. 9 of the Code of Civil Procedure, 1908, provides that no suit shall be defeated by reason of non-joinder of parties and O.I.R. 10(2) gives wide powers to the Court to add parties at any stage of the proceeding. But these are only rules of procedure which do not affect the substantive law, and Section 90 sub-section (2) of the Act expressly provides that every election petition shall be tried, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure 1908, "subject to the provisions of this Act and any rules made thereunder". Even under the Code of Civil Procedure if a necessary party is not joined in time, the whole suit is liable to be dismissed. Thus in Amirchand v. Raoji (A.I.R. 1930 Madras 714), when a decree for a partnership account was made without joining some of the partners, the suit was dismissed on appeal as limitation against the absent partners had expired,

and as those partners were necessary parties to the suit. The wording of S. 82 of the Act is peremptory and mandatory. It makes it incumbent on the petitioner in an election petition to join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated. It gives him no option, and his failure to do so involves the rejection of his petition. Either through sheer carelessness or wrong advice the petitioner has lost the chance of placing his case before us on its merits, but it cannot be helped.

We may point out that this accords with the view taken in Mohamedally Allabux v. Jafferbhoy and others (Hammond's Election Cases, p. 172, Annexure C, at pp. 181—183) and also in other cases such as those cited on pages 166, 395, 438 and 681 of Indian Election Cases by Sen and Poddar. The law then in force required all the nominated candidates to be made parties to an election petition in which the petitioner claimed the seat for himself. In all these cases some of the nominated candidates (which expression was interpreted as including the nominated candidates who had withdrawn within the prescribed time) had not been made parties and the Tribunals did not allow them to be joined subsequently, and rejected the claim to the seat on the ground of non-joinder of necessary parties. In Hazara Ram's Case (p. 395) it was observed (on p. 396) that the Rule being mandatory it was unnecessary to search for reasons to justify it. In Baba Khalel's Case (p. 168) it was rightly pointed out that the rule clearly required that all the nominated candidates should be joined as respondents to the petition "before it was presented", and a subsequent request to add them as parties to the petition was rejected. In all these cases only the petitioner's claim for the seat for himself was rejected, but in respect of the challenge of the successful respondent's election, the petition was allowed to be proceeded with, as the rule did not require the joinder of all the nominated candidates where the petitioner did not claim the seat for himself. But the principle laid down in these cases regarding the effect of non-joinder of necessary parties and the subsequent attempt to join them fully supports the view taken by us. The learned Advocate for the petitioner urges that while S. 90(4) of the Act gives a discretion to the Tribunal to dismiss an election petition if it does not comply with the provisions of Section 81, Section 83 and Section 117, it does not give a similar discretion if it does not comply with the provisions of Section 82. In support of this contention he relies upon the decision of the Election Tribunal, Quilon, in Sri C. K. Ramchandran Nair v, Sri Ramachandra Das and others (reported on p. 2396 C of the Gazette of India Extraordinary, Part I, Section 1, dated November 11, 1952). All that the decision says (on p. 2369g) is:—

> "Section 90(4) of the Act empowers the Tribunal to dismiss in limine an election petition which does not comply with the provisions of Section 81, Section 83 or Section 117. It does not authorise the dismissal of a petition for non-compliance with Section 82, which but prescribes who may be joined as respondents to an election petition."

There is no discussion on the point, and with all respect, we think that the Tribunal erred in assuming that the Tribunal's power to dismiss an election petition was derived from S. 90(4) of the Act. It is conferred on the Tribunal by Section 98(a) of the Act. The reason for the discretion given by Section 90(4) is to be found in the scheme of the Act itself. Section 80 says:—

> "no election shall be called in question except by an election petition presented in accordance with the provisions of this Part."

These words are mandatory and if the election petition is not presented in accordance with those provisions, the petitioner has no right to call in question the election. Then S. 81 provides as to who should present the petition, to whom and how it should be presented, on what grounds it can be presented and within what time it can be presented. Section 82 lays down who should be joined as respondents to the petition, while S. 83 says what the contents of the petition should be, and what should accompany it. Section 117 requires a deposit of Rs. 1,000 by the petitioner. It is only when all these requirements are complied with that an election can be questioned. No subsequent addition or amendment, especially after the period of fourteen days allowed by Rule 119, is permitted, except as provided by sub-section (3) of Section 83. There is no similar permission to make good the requirements of sections 81, 82 and 117, except that under the proviso to Section 85, the Election Commission may condone the delay in presenting the petition on being satisfied that sufficient cause existed for the petitioner's failure to present the petition within the period prescribed therefor. Then S. 85 says:—

> "If the provisions of S. 81, Section 83 or Section 117 are not complied with, the Election Commission shall dismiss the petition."

As soon as an election petition is presented, the Election Commission can find out whether the provisions of these three sections are complied with or not; and

section 85 peremptorily requires the Commission to dismiss the petition if they are not complied with. The same cannot be predicated of the requirements of S. 82. The Election Commission will have to hold an inquiry as to who were the candidates duly nominated, before determining whether all of them have been joined or not. This burden of the inquiry was not thrown on the Commission, but it was left to the Tribunal to determine. Hence S. 82 does not find a place in Section 85. Without considering whether all the necessary parties are joined or not, the Commission would transmit the petition and its accompaniments to the Tribunal. Then a question would arise as to whether, since the Commission did not dismiss the petition under S. 85, the Tribunal could go into the questions again and see whether the provisions of Sections 81, 83 and 117 had been complied with or not. Section 90(4), therefore, provides that *notwithstanding* anything contained in S. 85, the Tribunal may dismiss the petition on the grounds mentioned in that section. It may be noted that the purpose of Section 90(4) is to give a discretion to the Tribunal to re-open the questions already decided by the Commission. As Section 82 was not included in S. 85, it was naturally not mentioned in S. 90(4) also. Section 90(4) is not intended to take away the power of dismissal of the petition conferred upon the Tribunal by Section 98(a), but only to allay the doubts as to whether the questions presumably decided by the Election Commission under S. 85 could be re-opened. Hence the absence of any reference to Section 82 in Section 90(4) does not curtail the powers of the Tribunal to dismiss a petition if it does not comply with the provisions of Section 82, in view of the mandatory provisions of Section 80.

Another line of argument advanced on behalf of respondent No. 1 is also worthy of consideration. Under S. 90(1), any candidate is entitled to be joined as a respondent, on furnishing security for costs under S. 119, within fourteen days after the publication of the petition in the Official Gazette. Hence the petition could not be dismissed by the Commission before the expiry of that period on the ground of non-joinder of necessary parties. We do not propose to express any opinion on this reasoning, as we have already based our conclusions on the scheme of the Act and the interpretation of Sections 80, 82, 85, 90(4) and 98(a), and as a result of that conclusion, we find that the petition must fail.

Respondent No. 1, the only opposing respondent, will get his costs from the petitioner. The petition having been dismissed in a preliminary stage we allow a lump sum of one hundred rupees only as the costs of respondent No. 1.

We dismiss the petition and order the petitioner to pay a lump sum of Rs. 100 as costs to respondent No. 1. All the other parties shall bear their own costs.

(Sd.) N. S. LOKUR, *Chairman.*

(Sd.) S. N. MITRA, *Member.*

(Sd.) AZIZUL HAQUE FAKHRUDDIN, *Member.*

LUCKNOW,
18th December, 1952.

[No. 19/287/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.

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